

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

HOWARD E. STUBER, INC.¹

Employer

and

TEAMSTERS LOCAL UNION 261 a/w
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Case 6-RC-11668

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Gerald McKinney, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.²

Upon the entire record in this case³, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as amended at the hearing.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by July 16, 1999.

³ The Employer and the Petitioner filed timely briefs in this matter which have been duly considered by the undersigned.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

As amended at the hearing, the Petitioner seeks to represent a unit consisting of all regular full-time and all regular part-time blue collar operators/drivers and laborers employed by the Employer at its Rochester, Pennsylvania, facility; excluding office clerical employees, supervisors and guards as defined in the Act.⁴

Although the parties are in accord as to the composition of the unit, the Employer, contrary to the Petitioner, contends that the petitioned-for unit is too narrow in scope and that the only appropriate unit is a unit which includes its facilities located in Rochester, Pennsylvania (herein the Rochester facility), Pittsburgh, Pennsylvania (herein the Pittsburgh facility), and Warren, Ohio (herein the Warren facility).

There are approximately 38 employees in the petitioned-for unit, and 46 to 48 employees in the unit that the Employer contends is appropriate. There is no bargaining history for the employees in the petitioned-for unit, or for the employees at the Pittsburgh facility. The bargaining history pertinent to the employees at the Warren facility is described *infra*. At the close of the hearing in the instant case, the Petitioner indicated that it is willing to proceed to an election in any alternate unit found to be appropriate.

Howard E. Stuber, Inc., a Pennsylvania corporation, is engaged in non-retail industrial vacuuming and pipe cleaning services for customers in the industrial and municipal sectors. In performing these services, various types of equipment are used such as industrial vacuuming trucks, pipe cleaning machines, bucket machines and rodding machines. In addition, the

⁴ Although Petitioner appeared to argue at the close of the hearing that it considered the Rochester and Pittsburgh facilities to be a single facility, no such argument was made in its post-hearing brief.

Employer performs residential work for which servicemen utilize smaller van-type trucks.

Although the Employer has no specific geographical limitations, its work is generally performed east of the Mississippi River, as far north as Connecticut and as far south as Florida.

The Employer has three facilities from which it provides its various services. The main office is located in Rochester, Pennsylvania. The Rochester facility is located approximately 18 miles from the Pittsburgh facility and approximately 60 miles from the Warren facility. The Pittsburgh and Warren facilities are located approximately 70 miles apart.

Howard E. Stuber is the President of the corporation. Vice President Richard Starr reports to Stuber. Assistant Secretary Sam Trapp and Director of Operations Charles Pulaski, in turn, report to Starr. Rob Hartwick is the Employer's dispatcher and Steve Gruber and Dave Fitzgerald are both classified as foremen.

The Employer has three classifications of production employees, including operators, laborers and servicemen, who report to the foremen and to the dispatcher. Operators operate the equipment and interface with customers on the industrial and municipal jobs. Laborers perform physical labor on those jobs where it is required. Servicemen primarily are assigned to perform cleaning duties on residential jobs, generally utilizing electric snakes. The record evidence establishes that the employees within each of these classifications perform substantially the same work, possess the same skills and abilities, and have the same job duty requirements, regardless of the facility to which they are assigned.

The Rochester facility, where the Employer's main office is located, encompasses approximately ten acres. There are five buildings at the Rochester facility including a storage area, a repair facility, various offices and a dispatch trailer. The Employer's day-to-day operations emanate from the Rochester facility, where all accounting, bookkeeping and clerical functions for the three facilities are performed. All personnel, payroll, clerical, purchasing and billing records, Department of Transportation reports for Ohio and Pennsylvania, and work orders for the three facilities are maintained at the Rochester office. With the exception of certain smaller, "petty cash" items, the Employer attempts to make purchases on a centralized

basis for all three facilities out of the Rochester facility.⁵ For certain items purchased through suppliers in Ohio to be utilized in the Warren facility, purchase orders are requested by the foreman and the bills are submitted to the Rochester office. The Employer has a toll free telephone number which accesses this facility.⁶ Approximately 20 operators, 15 laborers and 3 servicemen work out of the Rochester facility. Dave Fitzgerald is the foreman who is assigned to this facility.

The Pittsburgh facility consists merely of a garage which houses several trucks. Two operators, who are dispatched out of the Rochester facility, work on jobs performed in the Pittsburgh area.

Although employees have been working in the Warren, Ohio area since 1994, the Warren facility has been in existence for less than two years. Approximately 80 per cent of the Warren facility's operation is limited to the service of one customer, Copperweld, a manufacturer of steel products.⁷ The Warren facility, which is located immediately next to the Copperweld plant, is leased by the Employer. It consists of two 24 feet by 40 feet bays where equipment is parked, a small glass-enclosed office and a bathroom. A number of dry vacs and pipe cleaning and vacuum trucks, which are used primarily in the Copperweld plant, are housed at the Warren facility on a regular basis. Other equipment is transported back and forth between sites. Foreman Steve Gruber and approximately six to eight employees, who are classified as operators and laborers, work out of the Warren facility.⁸ However, Gruber is also present in the

⁵ Certain items such as light bulbs, fuses or shovels needed on an emergency basis also can be purchased locally in Warren. Thus, foreman Gruber can purchase these items utilizing the petty cash account maintained in the Warren facility, submit a receipt, and be reimbursed.

⁶ The Employer's advertising brochure contains an address as well as a local and toll free telephone number for the Rochester facility. Although addresses are provided in the brochure for the Pittsburgh and Warren facilities, no telephone numbers are listed for those facilities.

⁷ This customer is also referred to in the record as CSC, Limited. The remaining portion of the Employer's work out of the Warren facility is performed for various other industrial clients and municipal customers.

⁸ The record reflects that the Employer does not have a strong residential base in the Warren area. Thus, no servicemen are regularly assigned to the Warren facility. Servicemen working out of the Rochester facility occasionally are assigned to open commodes at the Copperweld plant. In addition,

Rochester facility for some period of time approximately one to two days per week.⁹ No personnel files or individual payroll records are maintained at the Warren facility.

The Employer maintains a centralized dispatch operation which, as noted above, is located in the Rochester facility and run by dispatcher Rob Hartwick out of the dispatch trailer. Assignments are posted on a board in the dispatch trailer on a daily basis based upon considerations such as job location, logistics and who is available to perform the work. For assignments arising out of the Warren facility, foreman Gruber works in conjunction with Hartwick on a daily basis to determine what needs to be accomplished. However, there is no dispatch office in Warren and those employees generally report directly to the Warren facility.¹⁰

Employees do not work exclusively out of the particular facility to which they are assigned. Thus, when the work load becomes too great to handle out of one facility, the Employer assigns employees from another facility to job locations that might otherwise be outside of the employees' own geographic area. For instance, two to three employees from the Warren facility work out of the Rochester facility two to three times per month. Similarly, on any given day, a work crew from Rochester may be assigned to work out of the Warren facility and return later that same day.¹¹ When working out of the Warren facility, employees from the other facilities report to Gruber for direction at the work site. No permanent transfers have taken place between the facilities.¹²

servicemen are assigned during flooding situations to affected residential properties regardless of where the work is to be performed.

⁹ The record does not reflect the precise amount of time Gruber spends at the Rochester facility.

¹⁰ Assignments outside of the Copperweld plant are generally scheduled several days in advance. Contact is maintained between the Warren and Rochester facilities through facsimiles. Daily schedules are prepared by the dispatcher and the director of operations who are located in Rochester.

¹¹ By way of example, on the day of the hearing, two employees from the Rochester facility were assigned to work on a job at the Copperweld plant.

¹² However, one operator, who previously worked out of the Rochester facility, has been commuting on a daily basis from his home in the Rochester area to the Warren facility for approximately the past two years.

In addition, approximately five to six times per year, the Employer performs major services for various clients, including Copperweld,¹³ during extended periods of time referred to as outages. During outage periods, production ceases and the customers' facilities are shut down for a specific period of time in order that major cleaning, painting and maintenance work can be accomplished. The Employer performs work during outages for various clients located in geographical locations serviced by all three facilities. Depending on the client or type of outage involved, outages generally last from three days to two weeks. During these outages, the Employer utilizes up to six to seven crews, consisting of between three to four employees each, who work around the clock. Employees who are assigned during a outage from a facility outside the geographical location of the plant involved, either commute to the outlying location or stay in hotels, depending upon the length of the shifts involved. During outages, employees from the various facilities work side by side.

Employees are interchanged at other times, as well. For instance, during floods, certain clients located along river banks require 24-hour service. As with outages, employees are temporarily transferred to other facilities in order to adequately service the clients.

Employees from all three facilities attend certain training sessions conducted at the Rochester facility. For instance, Health and Human Resources representative Mike Kerr, who is responsible for the Employer's overall safety operations, conducts all safety training in Rochester.¹⁴ Kerr also conducts on-site visitations to look for problem areas and to discuss safety issues. Employees from all three facilities attend a safety program on an annual basis at

¹³ Outages at Copperweld normally occur in July and during the week of Christmas. Almost all of the employees from the three locations are assigned to Copperweld to work during these outages. In addition, foreman Dave Fitzgerald is assigned to Warren during outages when multiple foremen are needed, as well as on other occasions when specifically requested by a customer. Thus, Fitzgerald spends approximately 30 days per year working out of the Warren facility.

¹⁴ A mandatory, company-wide safety meeting is conducted in Rochester by Kerr every January. In addition, employees report to Rochester in order to fulfill certain continuing safety education requirements.

the Copperweld plant. In addition, employees from all three locations report to the Rochester facility on an annual basis to obtain required physicals.

Employees at all three facilities are covered by the same labor relations policies and procedures, which are administered out of Rochester by Vice President Richard Starr. Employment advertisements are placed in various newspapers in Warren, Beaver County and Pittsburgh through the Rochester office and applicants apply through Rochester utilizing a post office box number. Director of Operations Chuck Pulaski conducts most of the employment interviews and administers driving tests, when necessary, for applicants for the Rochester facility. Gruber performs these tasks for applicants out of the Warren facility. Thus, Gruber determines when additional employees need to be hired, conducts the initial interviews and, when satisfied with an applicant's qualifications, makes recommendations to the Rochester office.¹⁵ However, Starr has the final authority with respect to hiring. Similarly, although Gruber and Fitzgerald discuss disciplinary matters with and make recommendations to Starr, no formal discipline¹⁶ of employees, including termination, is implemented without his prior approval.¹⁷ Work rules are also formulated by Starr and are applied to employees at all three facilities.

Rates of pay and benefits for all three locations are determined by Starr, subject to the approval of the Employer's president Howard Stuber. Although there is some variance due to length of service and proficiencies, the rates of pay are comparable at all three locations.¹⁸ In

¹⁵ Gruber apparently has the independent authority to reject applicants without further review of his decisions in this regard.

¹⁶ The Employer utilizes documents which are referred to as "AVOs." AVOs, which are notes given to employees along with their paychecks, describe incidents or problems that are typically safety related. Gruber and Fitzgerald have the authority to prepare AVOs although they must be approved by Starr prior to being issued. Although an accumulation of AVOs can lead to discipline, generally, they fall short of constituting actual disciplinary warnings.

¹⁷ Although Gruber has the authority to send an employee off the job site, this authority is limited to situations involving employees who refuse to be tested for drugs following an accident.

¹⁸ Starting wage rates for operators and laborers are between \$8.00 to \$10.00 per hour and between \$7.00 and \$8.50 per hour, respectively, on a company-wide basis. Depending upon their wage increases, operators can earn between \$9.00 and \$15.00 per hour and laborers can earn between \$7.00 and \$10.00 per hour. Servicemen earn between \$7.00 to \$10.00 per hour.

addition, a wage progression scale is followed on a company-wide basis. Raises, as determined by Starr, are granted based upon length of service and degree of proficiency and correlate with employees' hire dates. Starr also performs 90-day probationary and annual reviews for the employees at all three locations.¹⁹ Health insurance, life insurance and disability benefits are provided on a company-wide basis and are identical at all of the facilities. Hours of work are comparable at Rochester, Pittsburgh and Warren, subject to some variance based on individual customer requests. Work schedules are formulated by Starr and are applied to the employees at all three locations. Employees at all three facilities wear the same uniforms.

Employees at the Rochester facility deposit their time cards in the dispatch trailer. Employees at the Pittsburgh facility complete their time cards which are then shuttled into the Rochester office where they are reviewed. In Warren, Gruber initially approves the time cards and they are then forwarded on to Rochester.²⁰ In this regard, although they are occasionally transmitted by facsimile, generally either Gruber or an employee who commutes between Rochester and Warren delivers the cards. The time cards received from the three facilities are forwarded to Starr's office and to the payroll office, where they are verified. Checks are cut from the Rochester office and delivered to the Pittsburgh and Warren facilities.

As previously noted, there is no prior bargaining history at the petitioned-for Rochester facility or at the Pittsburgh facility. With regard to the issue of bargaining history at the Warren facility, the record reflects that in early March 1999, after a check of authorization cards executed by employees working out of the Warren facility, the Employer executed a Recognition Agreement with United Steelworkers of America (herein referred to as USWA). In this Agreement, the Employer recognized USWA as the exclusive bargaining representative for all employees in the following bargaining unit:

¹⁹ The record does not reveal the source of Starr's knowledge of employees' ability and performance.

²⁰ However, Fitzgerald also approves time cards when he is working in the Warren facility.

All Production and Maintenance employees located at the Company's facility at Warren, Ohio and excluding all office, clerical employees, professional employees, guards and supervisors as defined in the Act.²¹

This document was executed on behalf of the Employer by Starr and Assistant Secretary Samuel Trapp. The Recognition Agreement provided that within ten business days of the signing of the agreement, the parties would meet to begin negotiations for a collective bargaining agreement.

During the meeting which resulted in the execution of the Recognition Agreement, representatives of the Employer and USWA also discussed the Employer's Rochester facility. In this regard, the representatives of the USWA indicated their desire to have authorization cards signed in Rochester and to thereafter formalize a Master Labor Agreement with the Employer. These discussions resulted in the execution of another document entitled, "Memorandum of Understanding, Card Check Recognition and Neutrality." This document was signed by USWA Staff Representative Kirk Davies, and by Stuber and Starr, on behalf of the Employer.²² Therein, the parties agreed that:

...if the USWA secures a simple majority of authorization cards in an appropriate Bargaining Unit at any of its facilities, the Company shall recognize the USWA as the exclusive representative of such employees without a secret ballot election conducted by the National Labor Relations Board. The authorization cards must unambiguously state that the signing employees desire to designate the USWA as their exclusive representatives for collective bargaining purposes.

In addition, in the Memorandum of Understanding the Employer agreed to adopt a position of neutrality in any USWA organizing campaign and to provide the USWA with an "Excelsior list" and access to the work site. The Memorandum of Understanding also provides that:

²¹ There are no maintenance employees in the Warren facility.

²² The Recognition Agreement was signed by both parties during a meeting conducted at USWA's office in Warren. Approximately one week later, the Memorandum of Understanding was executed by the Employer and the USWA.

The terms and conditions set forth in the Master Labor Agreement shall prevail at all of the Company's facilities where the USWA has been certified or recognized. The Master Labor Agreement may be modified to address local working conditions when necessary.

Since the time the Recognition Agreement and Memorandum of Understanding were executed, no representative of USWA has made a request to negotiate or to bargain a collective bargaining agreement. USWA has not submitted any proposals nor has there been any discussion as to why negotiations failed to commence within the ten-day period set forth in the Recognition Agreement. Pursuant to a written request,²³ the Employer forwarded by facsimile to USWA a company-wide roster consisting of the employees of all three facilities approximately two to three weeks prior to the hearing in the instant matter, long after the initial ten day window to commence negotiations had passed. However, there has been no other contact between representatives of the Employer and USWA since the Memorandum of Understanding was signed. The record does not reflect whether USWA attempted to organize employees of either the Rochester or Pittsburgh facilities of the Employer.²⁴ However, no representative of USWA has demanded recognition at the Rochester or Pittsburgh facilities.²⁵

In the instant petition, the Petitioner seeks to represent the employees at the Rochester facility, whereas the Employer maintains that this single-location unit is not appropriate and that the only appropriate unit is a multi-facility unit comprised of employees at all three of the Employer's locations. Initially, it must be determined whether the Employer's voluntary recognition of USWA at the Warren facility would bar an election in that unit. The Board has

²³ The written request by USWA did not include a request for bargaining.

²⁴ Starr was the only witness who testified during the hearing. Starr testified that he does not know whether USWA attempted to organize employees or to obtain authorization cards at the Rochester facility. Starr further testified that he was not familiar with the contents of a Master Labor Agreement and does not know whether the Recognition Agreement is currently in effect. Although USWA was notified of the hearing in this matter, no representatives of that labor organization appeared or otherwise intervened in these proceedings.

²⁵ The record reflects that no representative of USWA has presented any authorization cards to the Employer executed by employees who work out of either the Rochester or Pittsburgh facilities.

consistently held that where an employer has validly extended voluntary recognition to a union, the union is entitled to an irrebuttable presumption of majority status until a reasonable time for bargaining has elapsed. Exxel-Atmost, Inc., 309 NLRB 1024 (1992), citing Royal Coach Lines, 282 NLRB 1037, enf. denied on other grounds 838 F.2d 47 (2d Cir. 1988). There are no rules concerning what constitutes a “reasonable time”; each case must rest on its own particular facts. However, a reasonable time does not depend upon either the passage of time or the number of meetings between the parties, but instead on what transpired during those meetings and what was accomplished therein. Lee Lumber and Building Material Corp., 322 NLRB 175, 179 (1996).

In the instant case, the record reflects that in early March 1999, the Employer voluntarily extended recognition to USWA in good faith, on the basis of a previously demonstrated majority designation among the employees at the Warren facility.²⁶ Contrary to the Employer’s position as argued in its brief, I cannot conclude on the basis of this record that USWA has effectively disclaimed or repudiated its interest in representing any of the Employer’s employees at the Warren facility. Thus, although the Recognition Agreement states that the parties shall meet to begin negotiations for a collective bargaining agreement within ten business days of the signing of that agreement, it does not specify that an agreement must be concluded within that time frame.²⁷ Although no actual bargaining had taken place as of the time of the hearing, the record does not reflect why the parties did not commence negotiations within the time frame set forth in the Recognition Agreement. The record fails to establish that any representative of the Employer ever contacted USWA to commence negotiations or objected to the fact that

²⁶ Although in its brief, the Employer refers to the fact that the Recognition Agreement is undated, it acknowledges that its own witness testified that the document was indeed executed in early March 1999. In any event, the Board has held that a recognition agreement need not be in writing in order to bar a petition. See Mojave Electric Cooperative, Inc., 210 NLRB 88 (1974).

²⁷ I therefore reject the Employer’s contention in its brief that the recognition agreement between the Employer and USWA may be disregarded because the parties to it had established ten days as a reasonable time for bargaining.

negotiations had not begun. In any event the Board has held that once the fact of recognition is established, additional evidence that an employer actually has commenced bargaining or has taken other affirmative action consistent with its recognition of the union is not required since the bargaining obligation arises upon voluntary recognition and continues until there has been a reasonable opportunity for bargaining to succeed. Jerr-Dan Corp., 237 NLRB 302, 303 (1978), enfd. 103 LRRM 2603 (3rd Cir. 1979).

Moreover, there is no evidence on the record to establish that USWA actually abandoned its representation of the single unit of employees at the Warren facility. No representative of USWA has advised the Employer that the Recognition Agreement is not in effect. Moreover, the record reveals that as recently as two to three weeks prior to the hearing in this matter the USWA was exercising its rights under the Memorandum of Understanding to obtain an "Excelsior list", and the Employer was honoring the USWA's request. I therefore, conclude that as of the time of the conclusion of the hearing, the relevant time frame herein, a reasonable period of time for bargaining had not elapsed and that the Employer has a legal obligation to bargain with USWA as the exclusive collective bargaining representative of the employees at the Warren facility. Accordingly, the Employer's lawful voluntary recognition of USWA at its Warren facility would preclude the processing of a petition seeking to represent those employees, and must be carefully considered in assessing the Employer's contention that the Warren facility must be included in a multi-facility unit together with the Rochester and Pittsburgh facilities.

It is well established that, when considering a multi-facility operation, a single facility unit is presumptively appropriate for collective bargaining. This presumption applies even where a larger, more comprehensive unit might also be found appropriate. RB Associates, Inc., 324 NLRB 874, 877 (1997). The presumption may be overcome by a showing of functional integration so substantial as to negate the separate identity of the single facility unit. Courier Dispatch Group, 311 NLRB 728, 731 (1993), citing Dayton Transport Corp., 270 NLRB 1114

(1984); Brattleboro Retreat, 310 NLRB 615, 619 (1993). The burden is on the party opposing the single facility unit to present evidence overcoming the presumption. See General Mills Restaurants, Inc., d/b/a Red Lobster, 300 NLRB 908, 910-911 (1990). In J & L Plate, Inc., 310 NLRB 429 (1993), the Board stated the test for determining the appropriateness of a unit consisting of a single plant of a multi-plant employer. To determine whether the presumption of appropriateness has been rebutted, the Board examines such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; geographic distance between locations; and bargaining history, if any. Esco Corp., 298 NLRB 837, 839 (1990), and cases cited therein.

In the instant case, the presumption that the Employer's Rochester facility is an appropriate bargaining unit separate and apart from its Warren facility has not been rebutted. In addition to the fact that, as discussed above, the Employer lawfully voluntarily recognized a different union in a unit consisting of that single facility, which the Petitioner herein is not seeking to represent, other factors support a finding that the Rochester facility is an appropriate unit, exclusive of the Warren facility, for purposes of collective bargaining. Thus, the Warren facility is located approximately 60 miles from the Rochester facility and 70 miles from the Pittsburgh facility. Employees at the Rochester facility perform both commercial and residential services for a wide variety of customers. To the contrary, approximately 80 per cent of the Warren facility's work is performed on behalf of Copperweld, a single industrial client. One foreman, Steve Gruber, is regularly assigned to the Warren facility. Gruber advises of the need to hire additional employees, conducts initial interviews and makes recommendations for hire when he is satisfied as to an applicant's qualifications. Gruber also makes recommendations with respect to discipline and termination of employees. I therefore conclude that the

employees employed at the Rochester facility constitute an appropriate unit for collective bargaining apart from those employees employed at the Warren facility.²⁸

Based on the record herein, I do find that the presumptive appropriateness of a single facility unit limited to the Rochester facility has been rebutted with respect to the two employees who work out of the Pittsburgh facility. In this regard, the Rochester and Pittsburgh facilities are located only ten miles apart. The Pittsburgh facility consists merely of a garage which houses several of the Employer's trucks. Currently, only two operators, who are dispatched out of the Rochester facility, work on jobs performed by the Employer in the Pittsburgh area and no separate foreman is assigned to that facility. Moreover, unlike the situation at Warren, the record does not reflect that the employees working out of the Pittsburgh facility are routinely assigned to one major industrial client. Therefore, based on the above and the record as a whole, I find that the Rochester and Pittsburgh facilities are closely integrated with each other functionally, and effectively operate as a single unit and, therefore, a unit consisting of employees at these two facilities is appropriate.

Accordingly, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production employees, including operators, laborers and servicemen employed by the Employer at its Rochester, Pennsylvania and Pittsburgh, Pennsylvania facilities; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of

²⁸ While not insignificant, I do not find the interchange of employees between the Employer's facilities to be controlling, in view of all of the other factors relating to the separate nature of the Warren facility unit, at which another union has already been recognized by the Employer as discussed herein.

Election to be issued subsequently, subject to the Board's Rules and Regulations.²⁹ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.³⁰ Those eligible shall vote whether or not they desire to be represented for collective bargaining by Teamsters Local Union 261 a/w International Brotherhood of Teamsters, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 2nd day of July 1999.

²⁹ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

³⁰ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before July 9, 1999. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

347-2067
440-3300

Gerald Kobell
Regional Director, Region Six

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